IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 8TH OCTOBER 2007 / 16TH ASWINA 1929

WP(C).No. 17045 of 2007(D)

PETITIONER:

DR.K.SUNIL, AGED 38 YEARS,
S/O E.J.KUNJACHAN, EDASSERIL, MARARIKULAM
NORTH P.O., S.L.PURAM, ALAPPUZHA,
(GUEST LECTURER, PHYSICAL FACULTY IMPROVEMENT
PROGRAMME, ST.ALBERTS COLLEGE, ERNAKULAM,
KOCHI-18).

BY ADV. SRI.ESM.KABEER

RESPONDENTS:

1. THE UNIVERSITY OF CALICUT,
CALICUT UNIVERSITY P.O.,
REPRESENTED BY ITS REGISTRAR.

2. THE VICE CHANCELLOR,
UNIVERSITY OF CALICUT,
CALICUT UNIVERSITY P.O.,
MALAPPURAM DISTRICT.

3. DR.ALOYSIUS R.P.,
PALACE HOUSE, KOMAKINCODE,
KODANGAVILA P.O., THIRUVANANTHAPURAM-695123.

SHRI.P.C.SASIDHARAN, SC.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P(C).No. 17045/07.

APPENDIX

PETITIONER'S EXHIBITS:

P1. COPY OF THE M.SC. DEGREE CERTIFICATE DTD.13.1.93.

P2. COPY OF THE PH.D. CERTIFICATE.

P3. COPY OF THE CERTIFICATE OF LC.DTD.5.6.04.

P4. COPY OF THE CREAMYLAYER CERTIFICATE DTD.26.5.O7.

P5. COPY OF THE NOTIFICATION DTD.18.4.05.

P6. COPY OF THE SCORE SHEET SHOWING THE RANK.

P7. COPY OF THE REPRESENTATION SUBMITTED BEFORE R1.

P7(A) COPY OF THE REPRESENTATION BEFORE R1.
P7(B) COPY OF THE REPRESENTATION BEFORE INFORMATION OFFICER.

P8. COPY OF THE OF the MINUTES OF THE SELECTION COMMITTEE.

P9. COPY OF THE GUIDELINES FOR AWARDING INDEX MARKS.

P10. COPY OF THE MEMO ISSUED BY R1 DTD.29.9.05.

Sdk+

///True copy///

P.A. to Judge.

S.SIRI JAGAN, J.

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W.P.(C).No.17045 of 2007

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Dated this the 8th day of October, 2007

J U D G M E N T

The petitioner belongs to Latin Catholic community. Pursuant to applications invited for filling up a vacancy of Lecturer in Physics in the University of Calicut, which was reserved for Latin Catholics, the petitioner also applied. He was interviewed along with others, and according to him, the selection committee drew up a select list, in which he was placed the second in rank. Subsequently, the first rank holder, viz., third respondent herein, was issued appointment order to that post. Since the first rank holder did not join duty pursuant to the appointment order, the petitioner claims that he being the second rank holder, is entitled to be appointed to that post. The petitioner therefore, seeks the following reliefs in this writ petition:

> "i) to call for the records relating to Exhibits P-1 to P7(b) and to issue a writ of mandamus directing the respondents to appoint the petitioner as Lecturer (Physics) in the University of Calicut according to his rank;
>
> ii) to issue any writ, order or direction to the 1st respondent to consider and dispose of Exhibits P-7 and P-7(a) representations as expeditiously as possible."

2. The University has filed a counter affidavit. In the same, the contentions are as follows: In terms of the University Statutes, the selection committee after interviewing the candidates, is to submit its minutes to the Syndicate for its approval and for preparing the ranked list. The Syndicate of the University in its meeting held on 23.9.2005, considered the minutes of the selection committee to various posts including that of the post of Lecturer in Physics. Copy of the minutes is produced as Ext.R1(a). It is further stated therein that the Syndicate prepared a rank list consisting of only one candidate. The third respondent, the person so included in the list, was issued with an appointment order on 29.9.2005 and he reported for duty on 4.10.2005. At that time, certain writ petitions were pending before this court challenging the selection to various posts in the University including the appointment to the post of Lecturer in Physics and there was an interim order also. The then standing counsel for the University informed the University that the appointment made to the post amounts to breach of the court order in those writ petitions attracting contempt proceedings and advised the University to cancel the

appointment. Therefore, the University on 27.10.2005 issued another order cancelling the appointment of the third respondent and his services were thus terminated. Subsequently, on 31.3.2006, the then Standing Counsel informed the University that the court has modified the interim order and permitted the University to make appointment on provisional basis. In view of the said information from the Standing counsel, the University again issued appointment order to the third respondent on 5.4.2007, but he did not report for duty. It is further stated that in the rank list finalised by the syndicate there was only one candidate and that candidate was appointed to that post. Since he did not join duty nobody else can be appointed without conducting fresh selection. The claim of the petitioner that he was rank No.2 in the rank list was denied. The contention is that since the writ petition has been filed on wrong factual foundation that the petitioner was included in the rank list, the same is not maintainable. It is also stated that the petitioner was not awarded with any marks for qualification and total marks awarded by the University is only 35. It is stated that the petitioner is possessing only a second class in post graduation.

There is a further statement in the counter affidavit that there was only one vacancy, that too, reserved for LC/AI and the rank list was prepared only with one candidate and appointment was also made to that post. It is stated that subsequent resignation or non-joining of duty of the person appointed would not confer any right on the petitioner for appointment to the post just because he was called for interview.

3. The petitioner has filed a reply affidavit, along with which he has produced Ext.P8 to disprove the contention of the University that the rank list prepared contained only one name, viz., that of the third respondent. Ext.P8 is the copy of the minutes of the selection committee constituted for selection to the post of Lecturer reserved for LC/AI, in the Department of Physics, in the University of Calicut. It contains a resolution of the selection committee to approve a rank list with the third respondent as rank No.1 and the petitioner as rank No.2. The petitioner has also produced a document, Ext.P10, which is the original memorandum of appointment dated 29.9.2005 issued to the third respondent, in which the third respondent was directed to report for duty within 15 days from the date of receipt of that

memo, failing which the appointment would be treated as cancelled and the next candidate in the rank list would be appointed in the vacancy. Based on Exts.P8 and P10 the petitioner would seek to controvert the averments in the counter affidavit filed by the University.

4. I have considered the rival contentions in detail.

5. At the time of advancing arguments the counsel for the University, in addition to the contentions in the counter affidavit, raised a contention that since the third respondent had joined duty and thereafter left the service, the vacancy has been filled up and therefore, the resultant vacancy after his resignation should be filled up in accordance with communal rotation and not by the petitioner, failing which the rule that in an year reservation shall not exceed 50% would be violated.

6. First I shall deal with the contentions raised by the counsel for the University at the time of hearing of the case, which does not find a place in the counter affidavit at all. His contention is that after the third respondent left the service, the post has to be filed up by the next community candidate as per the reservation roster. Not only do I find any merit in this

contention for two reasons, I also find that the said contention runs counter to the averments in the counter affidavit. Firstly, the very contention of the University in their counter affidavit is that this post is reserved for the LC/AI community. Therefore, this particular post can be filled up only by the candidate in that community and therefore, there is no question of applying the reservation roster. Secondly, as is very clear from the counter affidavit, it is not a case where a person joined pursuant to the appointment and then left the service. It is clear from the counter affidavit that originally on 4.10.2005, the third respondent was appointed pursuant to Ext.P10 order of appointment. But, the University themselves admit that in view of the interim orders in force at the relevant time in the writ petitions pending, the University was forced to cancel that appointment. In such circumstances, there was no valid appointment at all to that post from the list prepared. Therefore, in the eye of law, the third respondent was not appointed pursuant to Ext.P10 and he never joined duty on 4.10.2005. After the interim order was modified, admittedly he was given a fresh appointment order pursuant to which he did not join duty at all. Therefore, naturally, the post

has to be filled up by the next person in the rank list, if there is one.

7. Now I shall come to the contention in the counter affidavit. In the counter affidavit it is stated that the Syndicate has drawn up a rank list containing only the name of the 3rd respondent. However, the University has not chosen to controvert Ext.P8 minutes of the selection committee at all, nor did they dispute the statement in Ext.P10 memo of appointment issued to the third respondent. It is categorically stated that if he does not report for duty within 15 days, his appointment would be cancelled and the next candidate in the rank list would be appointed in the vacancy. This would certainly point to existence of a rank list with more persons than the 3rd respondent. In Ext.P8 minutes of the selection committee, it is specifically stated that the selection committee resolved to approve a rank list consisting of the third respondent as rank No.1 and the petitioner as rank No.2. Of course, the University would rely on Ext.R1(a) extract from the minutes of meeting of the the Syndicate held on 23.9.2005. I am not satisfied that Ext.R1(a) is the select list at all, which reads like this;

"Considered the minutes of the selection committees for appointment to the following posts in the teaching departments of the University.

Resolved to approve the minutes and appointed the following as Professors/Readers/Lecturers in the Teaching Departments of the University as given against each.

xxx xxx xxx

Lecturer in Physics (LC/AI).

Dr.Aloysius.R.P.
Palace House,
Kamukincode, Kodangavila P.O.,
Trivandrum – 695 123."

From the above, it is abundantly clear that the decision therein was only for appointment of the third respondent to the post. Nothing is mentioned therein about the rank list. They have also not chosen to dispute Exts.P8 and P10. As such, I am not inclined to accept the contention of the University that no rank list was drawn up. In view of Ext.P8 I am inclined to accept the contention of the petitioner that he was the 2nd rank holder.

8. The counsel for the University points out that the third respondent was not heard in this writ petition. I do not find it necessary to hear the third respondent in view of the pleadings of the University itself that he has not joined duty pursuant to the offer issued to him. In fact it was only because the 3rd respondent

failed to join pursuant to the appointment order issued to him, cause of action for the petitioner to file this writ petition arose.

9. In the above circumstances, I am satisfied that now that the third respondent has not joined duty pursuant to the offer given to him, the petitioner, who is the second rank holder as per Ext.P8, is entitled to be appointed to the said post. Accordingly, there would be a direction to respondents 1 and 2 to issue appointment order to the petitioner herein to the post of Lecturer in Physics within two weeks from the date of receipt of a copy of this judgment.

10. In view of the cantankerous attitude taken by the University in their counter affidavit as well as in the arguments before me which runs counter to their own pleadings, I am inclined to award costs also to the petitioner. Respondents 1 and 2 shall pay an amount of Rs.5000/- as costs to the petitioner within two weeks from today.

The writ petition is disposed of as above.

Sd/-

sdk+ S.SIRI JAGAN, JUDGE

///True copy///

P.A. to Judge.